

**STATE OF MISSOURI  
MISSOURI BOARD OF PHARMACY**

IN RE:	)	
	)	
L & J PHARMACY, INC.	)	
d/b/a ROGERSVILLE PHARMACY	)	
319 South Main, Ste. N	)	Complaint No. 2015-003875
Rogersville, MO 65742	)	
Permit No. 2007000107	)	

**SETTLEMENT AGREEMENT BETWEEN MISSOURI  
BOARD OF PHARMACY AND L & J PHARMACY, INC.  
d/b/a ROGERSVILLE PHARMACY**

Come Now L & J Pharmacy, Inc. d/b/a Rogersville Pharmacy ("Respondent" or the "Pharmacy") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its

permit. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 2007000107, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo

#### **JOINT STIPULATION OF FACTS**

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo (2016)<sup>1</sup>, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Respondent Rogersville Pharmacy, 319 South Main, Ste. N, Rogersville, Missouri, is permitted by the Board under permit number 2007000107. Respondent's permit was at all times relevant herein current and active.

3. James W. Coker serves as the permit holder and the pharmacist-in-charge ("PIC") of the Pharmacy.

4. On or about July 28, 2015, the Board received a letter reporting that an anonymous complaint had been received by the National Benefit Integrity Medicare Drug

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise stated.

Integrity alleging the Pharmacy had expired drugs in its inventory and was improperly using patient coupon cards with Medicare part D.

5. Inspector Lisa Thompson investigated the allegations on behalf of the Board.

6. Inspector Thompson reviewed the Pharmacy's inventory on November 10, 2015 and found 21 expired products, three products with unreadable lot numbers and/or expiration dates and seven products repackaged into pharmacy vials with no lot number, expiration date or repackaging date.

7. Her specific findings from her review of the inventory as are follows:

<b>Rogersville Pharmacy Expired Product 11/10/15</b>		
<b>Drug</b>	<b>Expiration Date</b>	<b>Comments</b>
Mometason: cream	8/15	
Progesterone 100mg	10/15	
Pentoxifylline ER 400mg	5/15	
Jantoven 5mg	10/15	
Haloperidol 2mg	10/15	
Nifedipine 10mg	4/15	
Misoprostol 200mg	10/15	
Ibuprofen 200 mg	9/15	
Amitriptyline 150mg	8/15	
Quetiapine 300mg	9/15	
Amlodipine 5mg	8/15	
Thiothixene 2mg	6/15	
Minocycline 75mg	9/15	
Clarithromycin 250mg/5ml	9/5/15	
Moexipril 15mg	8/15	
Pravastatin 20mg	10/15	
Simvastatin 80mg	9/15	
Glip/Metformin 5/500	12/2/14	Return to Stock (original fill 12/2/13)
Pristiq 50mg	11/5/14	Return to Stock (original fill 11/5/13)
Nifedipine 10mg	5/22/15	Return to Stock (original fill 5/22/14)
Phillips Milk of Magnesia	10/14	Return to Stock (original fill 9/9/13)
Nuvigil	-	Unreadable
Exemestane 25mg	-	Unreadable
Ziprasidone 40mg	-	Unreadable
Lidocaine	-	Not documented
HCTZ 12.5mg	-	Not documented
Armour Thyroid 15mg	-	Not documented

Nexium 40mg	-	Not documented
Lisinopril 5mg	-	Not documented
Vesicare 5mg	-	Not documented
Loratadine 10mg	-	Not documented

8. During her investigation, Inspector Thompson also reviewed the Pharmacy's dispensing history for Symbicort, Nexium and Crestor for the period of January 1, 2015 to November 10, 2015.

9. She observed that seven prescriptions for three different patients were billed to the Nexium Savings Card following billing to Medicare or to the Veterans Affairs ("VA") Health System, to-wit:

Nexium Pharmacy Savings Card 1/1/15 – 11/10/15			
Date	Rx	Patient	Primary Insurance
10/16/15	450214	B.H.	Silverscript
4/27/15	450214	B.H.	Silverscript
3/30/15	443220	B.H.	Silverscript
6/16/15	443456	P.S.	MEDDPRIME
3/24/15	443456	P.S.	MEDDPRIME
5/26/15	450383	D.E.	VA
4/29/15	450383	D.E.	VA

10. The Nexium Savings Card states:

Patients who are enrolled in a state or federally funded prescription insurance program are not eligible for this offer. This includes patients enrolled in Medicare Part D, Medigap, Veterans Affairs (VA), Department of Defense (DOD) programs or TriCare, and patients who are Medicare eligible and enrolled in an employer-sponsored group waiver health plan or government-subsidized prescription drug benefit program for retirees.

If you are enrolled in a state or federally funded prescription insurance program, you may not use this savings card even if you elect to be processed as an uninsured (cash-paying) patient.

11. Inspector Thompson also observed that six prescriptions were filled for three different patients using the Crestor Savings Card following billing to a Medicare plan, to-wit:

<b>Crestor Savings Care 1/1/15 – 11/10/15</b>			
<b>Date</b>	<b>Rx</b>	<b>Patient</b>	<b>Primary Insurance</b>
9/16/15	456995	C.H.	Humana Med D
7/22/15	449348	J.R.	Community Care Rx
4/9/15	449348	J.R.	Community Care Rx
3/11/15	449348	J.R.	Community Care Rx
2/9/15	449348	J.R.	Community Care Rx
2/6/15	439828	H.C.	MEDDPRIME

12. The Crestor Savings Card states:

This offer is not insurance and is not valid for mail order of prescriptions purchased under Medicaid, Medicare or similar federal or state programs or for patients who are Medicare eligible and enrolled in an employer-sponsored group waiver health plan or government-subsidized prescription drug benefit program for retirees.

13. Inspector Thompson also observed that 39 prescriptions were filled for 21 different patients using the Symbicort Program following billing to Missouri Medicaid or a Medicare plan, to-wit:

<b>Symbicort Program 11/10/14 – 11/10/15</b>			
<b>Date</b>	<b>Rx</b>	<b>Patient</b>	<b>Primary Insurance</b>
3/13/15	444363	M.W.	Silverscript
6/1/15	444363	M.W.	Silverscript
8/17/15	444363	M.W.	Silverscript
10/19/15	444363	M.W.	Silverscript
9/4/15	465402	S.H.	Humana Med D
10/19/15	458676	F.S.	Prescription Soln.
11/6/15	454251	M.S.	Anthem Med D
10/9/15	454251	M.S.	Anthem Med D
9/8/15	454251	M.S.	Anthem Med D
11/9/15	457601	P.V.	Humana Med D
11/2/15	444795	D.T.	Medicare D
10/14/15	452332	J.W.	Silverscript
8/24/15	452332	J.W.	Silverscript
7/15/15	452332	J.W.	Silverscript
6/8/15	452332	J.W.	Silverscript
4/20/15	452332	J.W.	Silverscript
3/3/15	440520	J.W.	Silverscript
12/1/14	440520	J.W.	Silverscript
9/18/15	457181	M.S.	Cigna Medicare
8/28/15	456122	N.E.	Medicare D

8/13/15	451028	B.H.	MO Medicaid
7/17/15	454123	N.C.	Medicare D
4/13/15	449228	T.H.	MO Medicaid
4/10/15	436798	T.M.	MEDDADV
4/1/15	445598	L.G.	MEDDADV
3/26/15	448517	L.W.	MO Medicaid
3/19/15	443296	D.C.	MEDDPRIME
3/13/15	447889	J.M.	Silverscript
3/5/15	447447	B.D.	Medicare D
2/24/15	445639	P.E.	Humana Med D
12/18/14	442272	C.W.	MEDDPRIME
10/17/15	457194	S.W.	FirstHealth Pt. B
9/19/15	457184	S.W.	FirstHealth Pt. B
8/14/15	451340	S.W.	FirstHealth Pt. B
7/17/15	451340	S.W.	FirstHealth Pt. B
6/15/15	451340	S.W.	FirstHealth Pt. B
5/15/15	451340	S.W.	FirstHealth Pt. B
3/19/15	442554	S.W.	FirstHealth Pt. B
2/12/15	442554	S.W.	FirstHealth Pt. B

14. The Symbicort Program Card states:

Patients who are enrolled in a state or federally funded prescription insurance program are not eligible for this offer. This includes patients enrolled in Medicare Part D, Medigap, Veterans Affairs (VA), Department of Defense (DOD) programs or TriCare, and patients who are Medicare eligible and enrolled in an employer-sponsored group waiver health plan or government-subsidized prescription drug benefit program for retirees.

If you are enrolled in a state or federally funded prescription insurance program, you may not use this savings card even if you elect to be processed as an uninsured (cash-paying) patient.

15. Inspector Thompson conducted another inspection of the Pharmacy on February 9, 2016.

16. She again observed 32 expired drugs in active inventory and seven products repackaged into pharmacy vials with no lot number, expiration date or repackaging date, to-wit:

Rogersville Pharmacy Expired Product 2/9/16		
Drug	Expiration Date	Comments
Cyclafem 1/35	9/15	
Flector patches	8/15	
Gelnique	12/15	

Tamiflu x 2 packs	12/15	
Vivelle Dot 0.025	7/15	
Clobetasol cream 0.05%	12/15	
Tretinoin cream 0.05%	11/15	
Benzoyl Peroxide 5%	12/15	
Metoclopramide 5mg/5ml	12/15	
Skelaxin 800mg	10/15	
Skelaxin 800mg	1/16	
Verapamil 240mg	11/15	
Atenolol 50mg	11/15	
Nevanac drops	11/15	
Pentoxifylline 400mg	11/15	
Prednisone 2.5mg	11/15	
Misoprostal	12/15	
Simvastatin 5mg	12/15	
Progesterone 100mg	12/15	
Estazolam 2mg	10/15	
Venlafaxine 100mg	12/15	
Detrol LA 4mg	9/15	
Pioglitazone/Metformin 15/500	12/15	
Bupropion 100mg	11/15	
Nifedipine 10mg	12/15	
Alprazolam XR 2mg	11/15	
Amiodarone 400mg	1/16	
Lovaza 1gm	11/25/15	Return to Stock (original fill 11/25/14)
Namenda	1/5/16	Return to Stock (original fill 1/5/15)
Cialis	1/3/12	Filled 1/3/12 at another pharmacy
Ora-Sweet	8/27/15	Repackaged 8/27/14
Donepezil 10mg	-	Not documented
Divalproex 125mg	-	Not documented
Daliresp 0.5mg	-	Not documented
Levetiracetam 500mg	-	Not documented
Quetiapine 50mg	-	Not documented
Paricalcitol 1mcg	-	Not documented
Vimpat 200mcg	-	Not documented

17. By maintaining expired drugs in its active drug inventory, the Pharmacy violated 20 CSR § 2220-2.010(6) which states:

(6) Drugs and devices that are maintained as part of the pharmacy inventory or are being processed for dispensing or other distribution purposes must be physically separated at all times from articles, supplies or other drugs that are for employee personal use or that are outdated, distressed, misbranded or adulterated. An area separate from drug storage

must be used to store quarantined, nonusable substances. Areas used for this type of drug storage must be clearly identified.

### **JOINT CONCLUSIONS OF LAW**

18. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under 20 CSR § 2220-2.010(1)(O), which provides:

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

19. Cause exists to discipline Respondent's permit to operate a pharmacy under §338.210.5, RSMo, which provides:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation. §338.210.5, RSMo.

20. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under §338.055.2(4), (5), (6), (13), and (15), RSMo, which states, in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the



functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

### **JOINT AGREED DISCIPLINARY ORDER**

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

A. Respondent's permit numbered 2007000107 shall be placed on **PROBATION** for a period of **TWO (2) YEARS** ("disciplinary period"). The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

**The following terms apply for the entire disciplinary period.**

1. Respondent shall pay all required fees for licensing to the Board and shall renew its pharmacy license prior to October 31 of each licensing year.
2. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.
3. If requested, Respondent shall provide the Board a list of all licensed pharmacists employed by the Respondent, and the individuals' current home addresses and telephone numbers.
4. If, after disciplinary sanctions have been imposed, Respondent fails to keep its pharmacy license current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.

5. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months (due by each January 1 and July 1), beginning with whichever date occurs first after this Agreement becomes effective, stating truthfully whether or not it has complied with all terms and conditions of its disciplinary order.
6. Respondent shall not serve as an intern training facility for Missouri interns.
7. Respondent shall make a representative of the pharmacy available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.
8. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.
9. The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

B. Upon the expiration of said discipline, Respondent's license as a pharmacy in Missouri shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that the Respondent has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent.

C. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

D. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any

lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

E. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

F. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

**RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE  
LINE,**

                     **REQUESTS**

    *je*     **DOES NOT REQUEST**

**THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS  
SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S  
LICENSE AS A PHARMACY.**

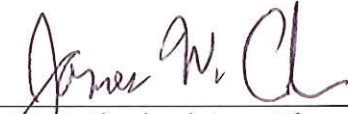
If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's permit and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's permit. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's permit, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

RESPONDENT

L & J PHARMACY, INC. d/b/a  
ROGERSVILLE PHARMACY

By:



As Authorized Agent for  
L & J PHARMACY, INC. d/b/a  
ROGERSVILLE PHARMACY

Printed:

James W. Coher

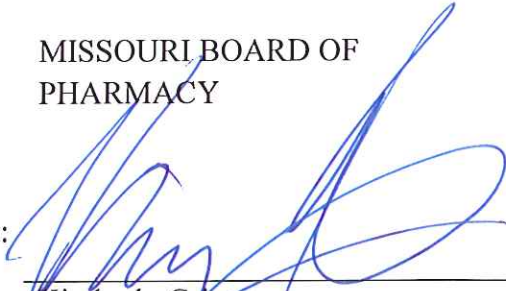
Date:

2-22-2018

PETITIONER

MISSOURI BOARD OF  
PHARMACY

By:



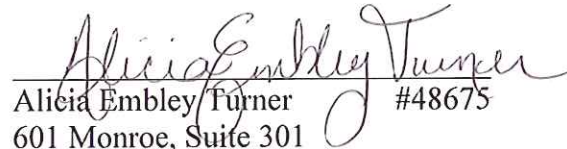
Kimberly Grinston  
Executive Director

Date:

3/9/18

NEWMAN, COMLEY & RUTH P.C.

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